

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 95-06
(March 31, 1995)

**Spouse of City Council Member Serving
As a Traffic Hearing Officer**

Issue

Is it ethically permissible for the spouse of a city council member to serve as a civil traffic hearing officer in the same city?

Answer: Yes.

Facts

The spouse of a city council member, who also happens to be the mayor, sits as a civil traffic hearing officer for the same municipality. The hearing officers are volunteers and do not receive monetary compensation. The mayor abstains from voting for their appointment. The municipality in question is relatively small and pursuant to statute all fines are retained by it.

Discussion

In order to answer this question, the Advisory Committee had to reconcile the Code of Judicial Conduct, which seeks to promote a judiciary that is fair, impartial, and devoid of any appearance of impropriety, with the awareness that the spouse of a judge may also have an independent career or avocation. While the public is entitled to a judiciary free of potential conflicts, a judge's spouse is also entitled to become involved in a wide range of jobs or activities that may occasionally overlap with the other spouse's judicial responsibilities. We believe, therefore, that the test for determining if a spouse's activities create an appearance of impropriety must take into account the nature of the activity and any local conditions or situations that bear upon that activity. Knowing this information, the test then becomes whether a person of ordinary prudence might find that there is a reasonable basis for questioning the judge's ability to carry out his or her responsibilities with integrity and impartiality.

There is always a danger that the civic activities of a married couple, particularly where one person is a judge and the other an elected official, may sometimes overlap or be misperceived by the public. This is especially true in a smaller jurisdiction, where there is a greater possibility that the public will make a connection between a judge, or in this instance a hearing officer, and his or her spouse. When this happens, the perception held by some that traffic courts are revenue-producing instruments of city councils may be enhanced. In larger jurisdictions, however, such a connection between spouses may not be as evident or as fiscally significant. Even so, the committee does not feel that the spousal relationship in itself

Advisory Opinion 95-06

is sufficient to discourage or prevent volunteer service on the bench under these circumstances. Instead, we suggest that the judge and his or her spouse should determine whether their activities would create an appearance of impropriety in their particular community.

Applicable Code Sections

Arizona Code of Judicial Conduct, Canons 1, 2 and 3 (1993).

Other References

Arizona Revised Statutes, § 28-1055(C).